

**IOWA DEPARTMENT OF NATURAL RESOURCES**  
**ADMINISTRATIVE CONSENT ORDER**

**IN THE MATTER OF:**

**CERRO GORDO COUNTY AND  
CITY OF MESERVEY**

**Wastewater Facility No. 6-17-54-0-01**

**ADMINISTRATIVE  
CONSENT ORDER  
NO. 2007-WW-11**

**TO: Robert E. Amosson, Chairman  
Board of Supervisors  
Cerro Gordo County  
220 North Washington  
Mason City, IA 50401**

**Richard Miller, Mayor  
City of Meservey  
P.O. Box 246  
Meservey, IA 50457-0246**

**I. SUMMARY**

This administrative consent order (order) requires Cerro Gordo County (County) and the City of Meservey (City) to retain an engineer to submit a preliminary engineering report, to immediately remove the bypass from the lift station wet well, to install new pumps at the lift station, and to obtain construction permits for future construction or modification to the wastewater treatment facilities. The County and the City have agreed to pay an administrative penalty and to perform a Supplemental Environmental Project (SEP). In the interest of avoiding litigation, the parties agree to the following order.

Any questions or response regarding this order should be directed to:

**Relating to technical requirements:**  
Eric Wiklund, Environmental Specialist  
IDNR Field Office #2  
2300 15<sup>th</sup> Street S.W.  
Mason City, Iowa 50401  
Ph: 641/424-4073

**Relating to legal requirements:**  
Diana Hansen, Attorney at Law  
Iowa Department of Natural Resources  
Henry A. Wallace Building, 502 E. 9th  
Des Moines, Iowa 50319-0034  
Ph: 515/281-6267

**II. JURISDICTION**

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175 which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1,

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**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
CERRO GORDO COUNTY AND  
CITY OF MESERVEY**

and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

The parties agree to the following Statement of Facts:

1. The City is a small community located in Cerro Gordo County. The City is served by a three cell waste stabilization lagoon (WWTF) that is operated as a controlled discharge facility. Prior to installation of the lagoon system, the community was unsewered. The WWTF discharges to a drain tile to an unnamed tributary to Bailey Creek pursuant to NPDES Permit No. 6-17-54-0-01.

2. Cerro Gordo County holds title to the City's WWTF. The current NPDES permit was issued to Cerro Gordo County for the City's WWTF on March 10, 2006. The permit expires on March 9, 2011.

3. On December 15, 2006 Field Office No. 2 conducted an investigation of a complaint at the City's WWTF. The field office was informed that a bypass had been installed in the wet well of the lift station. The field office inspector confirmed that the bypass was installed and that no construction permit had been issued for the bypass.

4. On December 15, 2006 Field Office No. 2 issued a Notice of Violation (NOV) letter to the City and to the County. The NOV stated that the bypass had been installed in September 2006 with the knowledge of the City's operator, the City and the County. The NOV informed the City and the County that the bypass installation was in violation of subrule 567 IAC 64.2(1), construction without a permit, and subrule 567 IAC 64.3(1), operation contrary to conditions of an operation permit.

5. The NOV required the County to obtain the services of a professional licensed engineer to conduct a study of the City's collection system and the viability of the lift station. The County was required to have the engineer submit a preliminary engineering report along with corrective measures to eliminate bypassing from the system. The County was required to remove the bypass from the wet well and obtain a construction permit for all changes, modifications or additions to the wastewater system.

6. On April 11, 2007 Field Office No. 2 was informed by the operator for this WWTF that a rubber plug was installed on the bypass. The bypass has not been removed. The operator also stated that the WWTF did not bypass during the winter or spring. An application for a construction permit for an upgrade to the lift station at this WWTF was received by the Department on March 18, 2007. The upgrade would consist of

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
CERRO GORDO COUNTY AND  
CITY OF MESERVEY**

replacement of existing pumps with new more reliable pumps. The permit application is under review by a Department engineer.

**IV. CONCLUSIONS OF LAW**

The parties agree to the following Conclusions of Law:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit.
2. Iowa Code section 455B.183 prohibits the construction or modification of a wastewater disposal system without a permit from this Department. Iowa Code section 455B.183 also prohibits the operation of a wastewater disposal system without or contrary to a permit from the Department.
3. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission to promulgate rules relating to the construction and operation of waste disposal systems and the discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60- 69.
4. Subrule 64.2(1) prohibits the construction or modification of any waste disposal system without a permit. Subrule 64.3(1) prohibits the operation of a WWTF without or contrary to the terms of an operation permit. The facts stated in Section III of this Order disclose construction and operation in violation of the above-cited provisions of statute and rule.

**V. ORDER**

The Department orders and the County and the City consent to the following:

1. The County and the City agree to obtain the services of a professional licensed engineer to conduct a study of the City's WWTF to determine the condition of the collection system and the viability of the lift station. The County and the City agree to submit a preliminary engineering report by September 30, 2007. The preliminary engineering report is required to include corrective measures for addressing infiltration and inflow into the collection system and a schedule for the elimination of bypassing from the system. The County and City agree to comply with the schedule to implement corrective measures.
2. The County and the City agree to immediately remove the illegal bypass from the wet well at the City's wastewater treatment facility. The County and the City agree to upgrade the lift station by installing new pumps.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
CERRO GORDO COUNTY AND  
CITY OF MESERVEY**

3. The County and the City agree to obtain a construction permit for all future changes, modifications or additions to the City's WWTF.

4. The County and the City agree to an administrative penalty of \$5,500.00. In lieu of payment of the full penalty, the County and City agree to pay an administrative penalty of \$1,250.00 and to perform an SEP. The \$1,250.00 administrative penalty is due to the Department within sixty days after the Director signs this order.

In lieu of the remainder of the administrative penalty, the County and the City agree to perform an SEP project that is estimated to cost \$5,800.00. The SEP consists of payment for the cost of placing chimney seals on ten manholes in the City of Meservey that have been identified as having leakage from joints on the upper portion of the manhole. It is estimated that the cost of the chimney seals would be \$580.00 per manhole or \$5,800.00. The County and the City agree to have the chimney seals installed by October 31, 2007. Documentation of the completed work and the cost of this work is due to the Department's Legal Services Bureau, with a copy to Field Office No. 2, by December 1, 2007.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10.

Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$5,500.00. The administrative penalty assessed by this order is calculated as follows.

a. Economic Benefit. The County and the City intended to save personnel expenses and inconvenience to operators by installing the bypass. Additional personnel expense for pumping during high rainfall events would be avoided by the installation of the bypass. The City's operator informed the field office that there has been no bypassing during the winter or spring. Based on this assertion no amount is assessed for this factor.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
CERRO GORDO COUNTY AND  
CITY OF MESERVEY**

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Construction prior to obtaining required permits threatens the integrity of the permit and water programs. Construction permits are required to ensure that wastewater treatment facilities are constructed in accordance with Department design standards and requirements. Since the bypass that was installed was illegal, the Department would have denied issuance of a construction permit and would have advised the County and City that the proposed bypass installation was illegal. For these reasons, \$2,500.00 is assessed for this factor.

c. Culpability. The County and the City had knowledge that the bypass was illegal and would not be approved by the Department. Despite this knowledge, the bypass was installed. The amount of \$3,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This order is entered into knowingly by and with the consent of the County and the City. By signature to this order, all rights to appeal this order are waived.

**VIII. NONCOMPLIANCE**

Failure to comply with this order may result in the imposition of additional administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with paragraphs 1- 3 of Section V. of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in this order.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
CERRO GORDO COUNTY AND  
CITY OF MESERVEY

Richard M. Miller  
RICHARD MILLER, MAYOR  
CITY OF MESERVEY

Dated this 9<sup>th</sup> day of  
July, 2007.

Robert E. Amosson  
ROBERT E. AMOSSON, CHAIRMAN  
BOARD OF SUPERVISORS  
CERRO GORDO COUNTY

Dated this 17<sup>th</sup> day of  
July, 2007

Richard A. Leopold  
RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 24 day of  
July, 2007

Cerro Cordo County and City of Meservey, Eric Wiklund- Field Office No. 2, Diana Hansen- Legal Services, U.S. EPA- Region 7, I.A.1, I.B.2d.